

February 5, 2003

Interpretive Letter 1-2003: Request under Section 362.106, RSMo. Activity requested - Bank Debt Cancellation Contracts and Debt Suspension Agreements

In your November 22, 2002, letter you requested a determination of the Missouri Division of Finance that a Missouri state-chartered bank, be authorized to enter into Debt Cancellation Contracts (DCCs) and Debt Suspension Agreements (DSAs) with its loan customers to the same extent as national banks domiciled in Missouri. You cited 12 C.F.R. Parts 7 and 37 issued September 13, 2002, by the Office of the Comptroller of Currency (OCC) to be effective on June 16, 2003, authorizing these products for national banks.

Under Section 362.106(4), RSMo, Missouri's "Super Wildcard Law", state-chartered banks may exercise specific powers that are requested in a notice and writing submitted to the director of finance if within the notice period the director determines that the proposed activity is not unsafe or unsound and that the bank meets the prescribed federal standards for national banks. The director may either take no action or issue an interpretive letter that specifically describes the activity permitted and any limitations on the activity.

Summary

The Division of Finance determines that a Missouri state-chartered bank may offer its loan customers DCCs and DSAs to the same extent and under the same standards as national banks under 12 C.F.R. Parts 7 and 37 and the limitations described in this letter. A bank must disclose certain information to its customers if pricing exceeds amounts described in this letter.

In addition commissions, compensation or other income to bank employees, officers, directors or shareholders on the sale of DCCs and DSAs are not allowed except to the extent described in this letter. The Division may adopt rules establishing further standards, practices or limitations at a later time. DCCs and DSAs offered under the terms and prescribed standards set out or incorporated by reference in this letter do not constitute an unsafe or unsound practice for state banks.

Findings

Our Chief Counsel notified you on December 3, 2002, that the Division would exercise its authority under Section 362.106(4) to review your request and in our notice we extended our response time from 30 to 90 days. We also advised you that a similar request was pending from another bank and that we would take up these requests at the same time. We have elected to respond specifically to your request because it more fully presents DCC and DSA products.

This interpretive letter is issued under Missouri's Super Wild Card law at Section 362.106, RSMo. We do not address specific or incidental powers of Missouri banks under other applicable laws and regulations. We may issue further guidance or regulations at a later time addressing the matter presented in this letter.

A DCC is a bank product that consists of a contract entered into by a bank providing for cancellation of all or part of the customer's obligation to repay an extension of credit from that bank upon the occurrence of a specified event. A DSA is a bank product that consists of a contract entered into by a bank providing for suspension of all or part of the repayment obligation under an extension of credit from that bank upon the occurrence of a specified event. Under a DCC or DSA, the customer pays a fee to the bank to obtain the benefit of the contract. The fee may be paid in a single lump sum or in periodic installments.

DCCs and DSAs are banking products that in some cases provide alternatives to insurance products. These products can benefit bank customers and they provide a source of revenue for the bank. However, these products also present management and consumer issues for the bank. OCC regulations 12 C.F.R. Parts 7 and 37 establish various standards including customer protections, prohibitions to reduce the risk of unfair dealing, disclosure requirements, and risk management and reserve practices for national banks. We will not further detail the OCC regulations here but these standards are the prescribed standards under this interpretive letter and are incorporated by reference and will be applied by the Division in reviewing any bank's DCC and DSA products and offerings.

Some DCC and DSA banking products are the functional equivalent of insurance products. State statutes and regulations limit rates that may be charged for credit insurance products. See, Section 385.070, RSMo; 20 CSR 600-2.110; and 20 CSR 600-2.200. These insurance products are available in Missouri. DCC and DSA banking products should be structured so that the pricing for a particular DCC or DSA product with a credit insurance equivalent can be determined. If this pricing exceeds the legal rate limits for an equivalent insurance product a bank customer should be informed that an equivalent insurance product can be purchased at a lower cost from an insurance agent offering credit insurance.

The Division has previously determined that with regard to functionally equivalent insurance products that the bank should receive the income for the sale of these products and that an unsafe and unsound condition is created where certain persons or entities other than the bank receive this compensation. See Regulation 4 CSR 140-2.050. This same concern exists with DCCs and DSAs and therefore the same restrictions will be applied. No bank employee, officer, director or principal shareholder may retain or receive commissions, compensation or other income from the sale of DCCs or DSAs nor receive or retain any bonus, salary, premium or other compensation contingent on sales of DCCs or DSAs. This income must be paid directly to the bank. Bonuses or incentives associated with DCCs or DSAs may be paid under a plan that incorporates limitations the same as those prescribed by Regulation 4 CSR 140-2.050.

DCCs and DSAs do not present an unsafe or unsound practice when a bank meets the standards prescribed in the federal rule and any further standards required by the Division of Finance including the standards and limitations in this letter. Please be aware that these are minimum standards and that the bank's board and management must exercise diligence in offering particular products and overseeing the marketing practices of the bank.

This letter will be posted on the public internet website of the Division of Finance and will become effective 10 days after filing in the Office of the Missouri Secretary of State. If you have any questions regarding this matter please contact Keith Thornburg, our chief counsel.

Very truly yours,

D. Eric McClure
Commissioner of Finance

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